

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Southwestern Bell Telephone Company) CC Docket No. 98-91
Pacific Bell and Nevada Bell)
Petition for Relief from Regulation)
Pursuant to Section 706 of the)
Telecommunications Act of 1996 and)
47 U.S.C. §160 for ADSL Infrastructure)
and Service)

COMMENTS OF GTE

GTE Service Corporation and its affiliated telecommunications companies¹ (collectively, "GTE") respectfully submit these Comments in support of the Petition filed by Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell ("SBC Petition") seeking deregulation of Asymmetrical Digital Subscriber Line ("ADSL") infrastructure and service. GTE agrees with SBC that regulatory relief is appropriate and will serve the public interest by providing the necessary stimulus critical to the continued development of advanced data services. GTE encourages the Commission to use this opportunity to resolve many of the ADSL issues and to provide deregulatory relief for all Incumbent LECs ("ILECs") in the provision of interstate ADSL.

¹ These companies include: GTE Alaska Incorporated; GTE Arkansas Incorporated; GTE California Incorporated; GTE Florida Incorporated; GTE Hawaiian Telephone Company Incorporated; The Micronesia Telecommunications Corporation; GTE Midwest Incorporated; GTE North Incorporated; GTE Northwest Incorporated; GTE South Incorporated; GTE Southwest Incorporated; Contel of Minnesota, Inc.; and Contel of the South, Inc.; GTE Communications Corporation.

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I. INTRODUCTION AND SUMMARY

The SBC Petition, while similar to other Petitions² seeking relief for advanced telecommunications networks, is narrowly focused on the ILEC's provision of ADSL service. SBC describes ADSL service, and presents substantial evidence of the highly competitive market for high speed data services like ADSL already offered by a variety of cable companies and telecommunications providers.

GTE is currently offering ADSL service from GTE's ADSL-equipped serving offices through its federal access tariff. GTE has an interest, similar to SBC's, in obtaining relief from requirements which impede GTE's ability to compete with non-regulated entities in the provision of a competitive ADSL service.

GTE agrees with SBC that regulatory relief for the ILECs' provision of ADSL is warranted and necessary. Substantial relief can be afforded under Section 10 of the Act. GTE does not believe, however, that it is necessary for the Commission to resolve, at this time, whether Section 706 provides an independent authority for relief not subject to the limitation specified in Section 10. Since SBC has presented a compelling argument for Section 10 regulatory relief affording non-dominant tariffing for ILECs in

² Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-11, filed January 26, 1998; Petition of Ameritech for Relief from Barriers to Investment in Advanced Telecommunications Capability, CC Docket 98-32, filed March 5, 1998; Petition of U S West for Relief from Barriers to Deployment of Advanced Telecommunications Services. CC Docket No. 98-26, filed February 25, 1998 (collectively, "the RBOC Petitions") and Petition of the Alliance for Public Technology Requesting Issuance of a Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, CCB/CPD 98-15, filed on February 18, 1998. *Compare* Petition of ALTS, CC Docket No. 98-78, filed May 27, 1998.

the provision of ADSL services, the Commission should proceed immediately to consider these deregulatory measures.

II. DISCUSSION

A. Although GTE Supports the Initiation of an Inquiry as Required by Section 706 of the Act, it is Not Necessary for the Commission to Resolve the Section 706 Issues to Afford Regulatory Relief.

SBC presents many compelling reasons for granting regulatory relief for the ILEC provision of ADSL service. SBC argues (at 23) that Sections 10 and 706 of the 1996 Act provide "two avenues to regulatory relief that are not mutually exclusive, but whose applications could overlap." While GTE does not disagree, GTE is concerned that the requested regulatory relief for ADSL will be unnecessarily overshadowed and impaired by the contentious issues already briefed in the RBOC Petitions, especially the issue of whether Section 706 permits the Commission to forbear from Section 251(c) and (d).

GTE does not believe that it is necessary to resolve the Section 706 issues to consider regulatory relief for ADSL. SBC argues that "[a]ssuming ADSL is subject to unbundling and wholesale discounts under Section 251(c)," the public interest supports forbearance.³ In fact, GTE has argued that there is no statutory or regulatory requirement that ILECs offer ADSL electronics as unbundled network element ("UNEs") or any duty to offer for resale at wholesale rates an exchange access service.

GTE urges the Commission to consider the scope of Section 706 in the inquiry directed by the statute. As discussed below, it is not necessary to consider whether the

³ SBC Petition at 26 (footnotes omitted).

Commission can forbear from certain obligations of 251 unless there is first found to be such a 251 obligation for ADSL for which forbearance is needed. In the meantime, the Commission should proceed to evaluate SBC's request for other regulatory relief for ADSL pursuant to Section 10.

B. With Conditioned Loops and Collocation, Competitors Have the Necessary Access to Provide Their Own ADSL Service.

The SBC Petition presents substantial evidence that competitors are already providing their own ADSL service. In addition, since CLECs may acquire ADSL-conditioned loops and collocate their own electronics at the ILECs' facilities, CLECs are able to provide a competitive ADSL offering.

1. It is Neither Mandated by the 1996 Act Nor Necessary to Require Incumbent LECs to Offer ADSL-Equipped Loops as Unbundled Network Elements.

As GTE has argued previously,⁴ the Commission did not include ADSL electronics among the 251(c)(3) list of UNEs, and there is no reason to impose this additional obligation on ILECs now.

GTE agrees with SBC that the 1996 Act and the Commission's rules require ILECs to provide competitors with access to unbundled loops.⁵ Moreover, it is clear that

⁴ See GTE Comments, CC Docket No. 98-78, filed June 18, 1998.

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15794 (¶1302) (the *Local Competition Order*), *stay granted in part sub nom. Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1996), *motions to vacate stay denied*, 117 S.Ct. 378-79 (1996), *order vacated in part on other grounds and aff'd in part*, 120 F.3d 753 (8th Cir. 1997), *mandate enforced*, 135 F.3d 535 (8th Cir. 1998), *cert. granted sub nom. AT&T Corp. v. Iowa Utilities Board*, No. 97-826 (October Term, 1997).

ILECs have a duty to condition a loop to carry digital loop functionality, such as ADSL.⁶ The Commission has explicitly stated that "loop conditioning [] is encompassed within the duty imposed by Section 251(c)(3)."⁷ The requirement to unbundle network elements, however, was not meant to be an unbounded mandate for ILECs to make available all of their innovative capabilities to competitors. GTE submits that, with regard to ADSL, loop conditioning is where the ILEC's unbundling duty ends. Additional unbundling to provide electronic equipment to connect to unbundled loops would be inconsistent with the Act and completely unwarranted in today's competitive environment.

As GTE explained previously, avoiding unreasonable unbundling requirements is absolutely critical to the continued development of an advanced telecommunications infrastructure and the accompanying advanced data services such as ADSL. Imposing the additional duty on ILECs to unbundle loops equipped with ADSL electronics will undoubtedly deter incentives to invest and innovate. Competition and innovation are flourishing in the advanced telecommunications market. There is no need to add more regulations when the intent of the 1996 Act was to promote a "pro-competitive, deregulatory environment."

⁶ *Id.* ("if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals.")

⁷ *Id.* at ¶382.

2. It is Neither Mandated by the 1996 Act Nor Necessary to Require Incumbent LECs to Offer ADSL to CLECs at Wholesale Rates.

The 1996 Act requires an ILEC to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."⁸ This obligation, however, does not apply to exchange access offerings. Since ADSL is a service used to originate and terminate interstate telecommunications, it is properly classified as an exchange access service.⁹ The Commission has unambiguously concluded that "[e]xchange access services are not subject to the resale requirement of section 251(c)(4)."¹⁰

As an access service, ILECs are required to provide ADSL on a non-discriminatory basis to all. There are obviously no resale restrictions permitted on an ILEC's access service. However, requiring ILECs to resell their ADSL service to CLECs at a discount would inhibit investment and innovation by both the ILEC and the CLEC, as with the unbundling requirement. Mandating discounted resale for an ADSL access service would not serve the public interest in obtaining advanced telecommunications services.

⁸ 47 U.S.C. § 251(c)(4)(A).

⁹ *Local Competition Order* at ¶874.

¹⁰ *Local Competition Order* at ¶ 873.

C. SBC has Presented a Compelling Showing for Regulatory Relief Pursuant to Section 10.

The SBC Petition seeks forbearance, pursuant to Section 10, "specifically including, without limitation, dominant tariffing requirements (including the need to provide cost studies on a more frequent basis than required from a nondominant carrier) and dominant pricing constraints."¹¹ GTE agrees that SBC has met the standards required under Section 10 and urges the Commission to apply nondominant tariffing to all ILECs providing ADSL service.

SBC shows how forbearance from dominant treatment with regard to ADSL is justified. Section 10(a)(1) requires a showing that

enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

SBC describes the competitive nature of ADSL and the actual and potential competitors for ADSL service. This competition will assure that the ILEC's service is available at reasonable terms and prices. Since the market will dictate the price, there is no need to require extensive cost support or other justification. If the rate is not justified, customers have other providers to choose from. Moreover, since the ILEC's service will still be tariffed, the Commission can assure that the rates, terms and conditions are nondiscriminatory and available to all on the same terms and conditions.

Section 10(a)(2) requires a showing that

¹¹ SBC Petition at 28 (footnote omitted).

enforcement of such regulation or provision is not necessary for the protection of consumers;

The SBC Petition clearly shows that there are many ADSL alternatives. Customers can obtain ADSL service directly from the ILEC, from a CLEC reselling the ILEC ADSL service, from a CLEC providing its own ADSL service using conditioned unbundled loops and collocated equipment, from another provider using its own facilities or bundled with an information service provider's service. In addition, there are other competitive alternatives available to deliver high-bandwidth access to end users such as ISDN, cable modems, wireless systems and satellites.¹² These technologies also represent access alternatives for consumers. GTE agrees with SBC that since competitive service alternatives exist, consumers will be protected.

Section 10(a)(3) requires a showing that

forbearance from applying such provision or regulation is consistent with the public interest.

As SBC states "[a]ctual and potential competition for retail high-speed data services with which the SBC LECs' ADSL service will compete clearly undercuts the policy basis for regulation."¹³ Other LECs also face a robust competition for these services. The public interest is obviously served by more competition and more even-handed treatment of all competitors.

¹² See GTE Comments, CC Docket No. 98-78, filed June 18, 1998 at 15-16.

¹³ SBC Petition at 29.

III. CONCLUSION

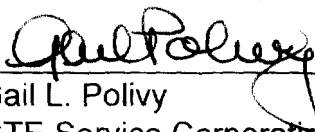
GTE agrees with SBC that it is time for the Commission to afford deregulatory relief to ILECs to provide ADSL service. While it is important for the Commission to conduct a full inquiry into the issue of promoting advanced communications services, this should not impede the provision of competitive services that are now available. GTE urges the Commission to speed this process along by approving the SBC request for non-dominant tariffing of ADSL service.

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Respectfully submitted,

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Certificate of Service

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